**Before the**
**Federal Communications Commission**
**Washington, D.C. 20554**

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| In the Matter of | ) | |
| | ) | Facility ID No. 61255 |
| **Southern Broadcasting & Investment Co., Inc.** | ) | NAL/Acct. No. MB-201041410014 |
| | ) | FRN: 0010695773 |
| Licensee of Station WBTY(FM) | ) | File No. BRH-20040405ACH |
| Homerville, Georgia | ) | |

# FORFEITURE ORDER

**Adopted: January 20, 2011** **Released: January 21, 2011**

By the Chief, Audio Division, Media Bureau:

## I. INTRODUCTION

1. In this Forfeiture Order ("Order"), we issue a monetary forfeiture in the amount of three thousand two hundred dollars ($3,200) to Southern Broadcasting & Investment Co., Inc. ("Southern"), licensee of Station WBTY(FM), Homerville, Georgia ("Station"), for willfully violating Section 73.3539 of the Commission's Rules ("Rules") by failing to timely file a license renewal application, and for willfully and repeatedly violating Section 301 of the Communications Act of 1934, as amended ("Act"), by engaging in unauthorized operation of the Station after its authorization had expired.[1]

## II. BACKGROUND

2. On September 17, 2010, the Bureau issued a Notice of Apparent Liability for Forfeiture ("NAL") in the amount of seven thousand dollars ($7,000) to Southern for violations of the Rules and the Act.[2] As noted in the NAL, Southern's license renewal application should have been filed by December 1, 2003, four months prior to the Station's license expiration date of April 1, 2004.[3] However, Southern did not file the renewal application until April 5, 2004. On April 7, 2004, Southern filed a request for Special Temporary Authority ("STA") to continue operation of the Station pending consideration of its renewal application; the staff granted the STA on April 20, 2004.[4] The STA expired on October 20, 2004, and Southern did not seek an extension of the STA, although it continued to operate the Station. Southern filed a Request for Cancellation or Reduction of Proposed Forfeiture ("Request") on September 30, 2010.

3. In its Request, Southern states that cancellation or reduction of the proposed forfeiture is warranted because payment of the proposed forfeiture will cause it financial hardship.

[1] 47 C.F.R. § 73.3539; 47 U.S.C. § 301.

[2] *Southern Broadcasting & Investment Co., Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 25 FCC Rcd 13199 (MB 2010).

[3] *See* 47 C.F.R. §§ 73.1020, 73.3539(a).

[4] *Letter to Ms. Nancy Knight-Strickland*, Ref. 1800B3 (Chief, Audio Division, Media Bureau, April 20, 2004).

## III. DISCUSSION

4. The forfeiture amount proposed in this case was assessed in accordance with Section 503(b) of the Act,[5] Section 1.80 of the Rules,[6] and the Commission's *Forfeiture Policy Statement*.[7] In determining the appropriate forfeiture amount, Section 503(b)(2)(E) of the Act requires that we take into account the nature, circumstances, extent and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.[8]

5. Southern does not dispute that it failed to file a timely license renewal application for the Station and operated the Station without authority both between the time the Station's license expired and the grant of its STA to continue operation and after the expiration of the STA. However, Southern argues that the forfeiture should be reduced or cancelled because paying the forfeiture amount would cause it significant financial hardship. The Commission will not consider reducing or canceling a forfeiture in response to inability to pay unless the licensee submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices ("GAAP"); or (3) some other reliable and objective documentation that accurately reflect the licensee's current financial status. Southern provided its federal tax returns for 2007, 2008, and 2009.

6. Here, cancellation of the forfeiture is inappropriate. Typically, a licensee shows financial hardship based on its gross revenue.[9] The Commission uses gross revenue as the primary measuring stick by which it evaluates a licensee's ability to pay.[10] Other financial indicators may be considered, but operating losses alone do not mean a licensee cannot afford to pay.[11] In the past, we have cancelled forfeitures based on losses only in extreme cases.[12] In this case, Southern's tax returns for 2007, 2008, and 2009 show gross revenues of approximately $66,000, $61,000, and $66,000, respectively.[13] The returns also show losses of $16,935 and $5,845 in 2008 and 2009, respectively. However, the losses never amount to more than 30 percent of gross revenue in a single year and are approximately 12 percent of gross revenue over the three years of returns provided. Southern cannot justify cancellation of the forfeiture for financial hardship based on the submitted returns.

7. However, Southern is entitled to a reduction of the forfeiture, based on its gross revenue figures. Previously, we have found forfeitures of approximately 5 percent of a licensee's average gross

[5] 47 U.S.C. § 503(b).

[6] 47 C.F.R. § 1.80.

[7] *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999).

[8] 47 U.S.C. § 503(b)(2)(E).

[9] *See, e.g.*, *Todd A. Steiner, Esq.*, Letter, 23 FCC Rcd 13935 (MB 2008) (cancelling $6,000 NAL where yearly gross revenues for the relevant three-year period were $7,824, $8,061, and $5,670).

[10] *CARE Broadcasting, Inc.*, Forfeiture Order, 25 FCC Rcd 1411, 1413 (MB 2010) ("*CARE Broadcasting*"); *PJB Communications of Virginia*, Memorandum Opinion and Order, 7 FCC Rcd 2088, 2089 (1992).

[11] *PJB Communications of Virginia*, Memorandum Opinion and Order, 7 FCC Rcd 2088, 2089 (1992); *see also Valley Air, LLC*, Letter, 24 FCC Rcd 5505, 5507 (MB 2009) ("Valley Air") (cancelling forfeiture based on losses of $345,000 as compared to $235,000 in revenue over three years).

[12] *Valley Air*, 24 FCC Rcd at 5507 (cancelling NAL where cumulative net losses exceeded Station's revenues by fifty percent over the relevant three-year period).

[13] *See CARE Broadcasting*, 25 FCC Rcd at 1413 (upholding the forfeiture issued to a licensee with gross revenues between $48,000 and $86,000 per year).

revenue to be reasonable.[14] The current proposed forfeiture ($7,000) constitutes almost 11 percent of Southern's average gross revenue. Imposing a forfeiture of $3,200 will bring this case in line with the 5 percent standard used in prior cases, and we believe that such a reduction is reasonable based on the facts of this case.

8. We have considered Licensee's response to the NAL in light of the above statutory factors, our Rules, and the *Forfeiture Policy Statement*. We conclude that Licensee willfully[15] violated Section 73.3539 of the Rules and willfully and repeatedly[16] violated Section 301 of the Act. However, for the reasons set forth above, we find that reducing the forfeiture amount to three thousand two hundred dollars ($3,200) is appropriate in this case.

## IV. ORDERING CLAUSES

9. Accordingly, IT IS ORDERED, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.283 and 1.80 of the Commission's Rules,[17] that Southern Broadcasting & Investment Co., Inc., SHALL FORFEIT to the United States the sum of three thousand two hundred dollars ($3,200) for willfully violating Section 73.3539 of the Commission's Rules and for willfully and repeatedly violating Section 301 of the Communications Act of 1934, as amended.

10. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Commission's Rules within 30 days of the release of this Forfeiture Order. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.[18] Payment of the proposed forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Acct. No. and FRN No. referenced in the caption above. Payment by check or money order may be mailed to Federal Communications Commission, at P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank—Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank: TREAS NYC, BNF: FCC/ACV--27000001 and account number as expressed on the remittance instrument. If completing the FCC Form 159, enter the NAL/Account number in block number 23A (call sign/other ID), and enter the letters "FORF" in block number 24A (payment type code).[19] Licensee will also send electronic notification on the date said payment is made to michael.wagner@fcc.gov and seth.williams@fcc.gov. Requests for payment of the full amount of the forfeiture under an installment plan should be sent to: Associate Managing Director-Financial Operations, Room 1-A625, 445 12th Street, S.W., Washington, D.C. 20554.[20]

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[14] *CARE Broadcasting*, 25 FCC at 1413.

[15] Section 312(f)(1) of the Act defines "willful" as "the conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate" the law. 47 U.S.C. § 312(f)(1). The legislative history of Section 312(f)(1) of the Act clarifies that this definition of willful applies to Sections 312 and 503(b) of the Act, H.R. REP. No. 97-765, 51 (Conf. Rep.), and the Commission has so interpreted the terms in the Section 503(b) context. *Southern California Broadcasting Co.,* Memorandum Opinion and Order, 6 FCC Rcd 4387, 4387-88 (1991), *recon. denied,* 7 FCC Rcd 3454 (1992) ( "*Southern California*").

[16] Section 312(f)(1) of the Act defines "repeated" as "the commission or omission of [any] act more than once or, if such commission or omission is continuous, for more than one day." 47 U.S.C. § 312(f)(1). *See also Southern California*, 6 FCC Rcd at 4388 (applying this definition of repeated to Sections 312 and 503(b) of the Act).

[17] 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.283, 1.80.

[18] 47 U.S.C. § 504(a).

[19] *See* 47 C.F.R. § 1.1914.

[20] *Id*.

11. IT IS FURTHER ORDERED, that a copy of this Forfeiture Order shall be sent by Certified Mail Return, Receipt Requested, and by First-Class Mail, to: Southern Broadcasting & Investment Co., Inc., P.O. Box 9, Dupont, Georgia 06880, and to its counsel, Lauren A. Colby, Esq., 10 East Fourth Street, P.O. Box 113 Frederick, Maryland 21705.

FEDERAL COMMUNICATIONS COMMISSION

Peter H. Doyle
Chief, Audio Division
Media Bureau